IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

CASE NO.: 5:18-cv-00511-FL

| MARIAN SNOW, |) | |
|--------------------------------|---|--------------------------|
| |) | |
| Plaintiff, |) | |
| |) | |
| V. |) | MOTION TO DISMISS |
| |) | |
| GENERAL ELECTRIC COMPANY; DELL |) | Fed. R. Civ. P. 12(b)(6) |
| TECHNOLOGIES; DELL, INC.; and |) | |
| DELL EMC, |) | |
| |) | |
| Defendants. |) | |

Defendant General Electric Company ("GE") hereby moves the Court, pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss the First Amended Complaint against it by Plaintiff Marian Snow ("Plaintiff") for failure to state a claim upon which relief may be granted. As grounds for its Motion, GE states that Plaintiff claims pursuant to the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA"), fail as a matter of law because Plaintiff does not plead factual allegations in her Complaint that would plausibly entitle her to relief for at least two reasons: (1) Plaintiff does not plead factual allegations which show that GE sent the text messages to the cellular telephone at issue in her Complaint or caused those text messages to be sent (as opposed to some other person or entity); and (2) Plaintiff does not allege adequate facts which would show that GE sent the text messages using an automated telephone dialing system ("ATDS") as defined (and proscribed) by the TCPA.

¹ Plaintiff filed her Complaint (Doc. 1) in the United State District Court for the Northern District of Alabama, Western Division, on November 21, 2017. Plaintiff filed her Amended Complaint (Doc. 4) on December 6, 2017.

To the contrary, Plaintiff's allegations, taken as true for purposes of this Motion to Dismiss, establish that the text messages were technical alerts sent to the telephone number in question for a prior user and not randomly generated or sequential numbers. Further, Plaintiff's conversion claims fail as a matter of either Alabama or North Carolina law because she was never deprived of physical possession of the cellular telephone at issue.

In further support of this Motion, GE adopts and expressly incorporates herein its Memorandum of Law in Support of Motion to Dismiss, which is being filed contemporaneously with this motion.

WHEREFORE, GE respectfully requests that this Court enter an Order dismissing Plaintiff's First Amended Complaint with prejudice.

Respectfully submitted this the 7th day of December, 2018,

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CERTIFICATE OF SERVICE

This is to certify that the foregoing document was electronically filed with the Clerk of Court using the CM/ECF System, which will send notification of such filing to all counsel of record listed below who are registered with the CM/ECF System:

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This the 7th day of December, 2018.

/s/ Jon Berkelhammer
Jon Berkelhammer
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